

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2658 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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KAMLABEN B SEDALIA

Versus

COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR

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Appearance:

MR DU SHAH for Petitioner

MR DN PATEL, ASST.GOVERNMENT PLEADER for Respondent No. 1

MR HM BHAGAT for Respondent No. 3

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 16/12/97

ORAL JUDGEMENT

The petitioner, by way of this petition, has prayed to declare that the order dated 14.11.1996 at Annexure.H passed by the Competent Authority and Additional Collector, ULC, Ahmedabad, is without jurisdiction, null and void and to quash and set aside

the same and to direct him to issue no objection certificate for sale of the property in question and has further prayed to declare that the petitioner is entitled to registration of the sale deed at Annexure.C for sale of Plot No.30, at Satyagrah Chhavani, at Ahmedabad in favour of Shri Rakeshbhai Ranchhodbhai Gandhi and Smt. Jyotiben Rakeshbhai Gandhi and to issue appropriate direction to the Sub-Registrar, Ahmedabad to register the sale deed.

On 19.12.1994, in Case No. 3822, the Competent Authority has declared 846 sq.mtrs. of surplus land out of Plot No.30 in Satyagrah Chhavani Co-operative Housing Society, at Ahmedabad. It appears that there was an error in the calculation of measurement in the said order. The petitioner, therefore, filed an Appeal No.78 of 1994 before the Urban Land Tribunal, at Ahmedabad. In January 1995, the Tribunal, by its judgment and order held that there was an error in the order passed by the Competent Authority in declaring excess vacant land as only 341.478 sq.mtrs. were to be declared as surplus land and the petitioner is entitled to retain 444.467 sq.mtrs. of land. On 22.7.1996, the petitioner entered into an agreement for sale of the Plot No. 30 in Satyagrah Chhavani in favour of one Shri Rakeshbhai Ranchhodbhai Gandhi and Smt.Jyotiben Rakeshbhai Gandhi for the sale price of Rs.13,30,000/- and tendered the sale deed for registration. As per the provisions of Section 26 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act'), the petitioner is required to give notice to the Competent Authority before transfer of the vacant land. The petitioner gave notice dated 1.8.1996 to the Competent Authority, at Rajkot. It appears that the Competent Authority, at Rajkot, by his communication dated 19.9.1996, was of the view that, since the land of the petitioner is situated at Ahmedabad, the petitioner should address a notice to the Competent Authority, at Ahmedabad, under Section 26 of the Act. The petitioner, accordingly, on 22.9.1996 addressed a notice to the Competent Authority, at Ahmedabad, seeking permission to sell 444.648 sq.mtrs. of land in Plot No.30 in Satyagrah Chhavani, at Ahmedabad. The Competent Authority, Ahmedabad, by his communication dated 3.10.1996 sought further document from the petitioner which was sent by the petitioner on 9.10.1996. On 14.11.1996, the Competent Authority, at Ahmedabad, addressed a letter to the petitioner stating that the case file regarding the order of the Competent Authority is called for by the Government for possible review and, therefore, the permission for sale of land was rejected for the time

being and the said communication is under challenge in this petition.

Section 26 of the Act deals with the notice to be given before the transfer of vacant land and it reads as under:

"26. Notice to be given before transfer of vacant lands. - (1) Notwithstanding anything contained in any other law for the time being in force, no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise except after giving notice in writing of the intended transfer to the competent authority.

(2) Where a notice given under sub-section (1) is for the transfer of the land by way of sale, the competent authority shall have the first option to purchase such land on behalf of the State Government at a price calculated in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894), or of any other corresponding law for the time being in force and if such option is not exercised within a period of sixty days from the date of receipt of the notice, it shall be presumed that the competent authority has no intention to purchase such land on behalf of the State Government, and it shall be lawful for such person to transfer the land to whomsoever he may like:

Provided that where the competent authority exercises within the period aforesaid the option to purchase such land the execution of the sale-deed shall be completed and the payment of the purchase price thereof shall be made within a period of three months from the date on which such option is exercised."

Reading the said provision, it is clear that, under sub-section (1), no person entitled to hold vacant land shall transfer such land by way of sale etc., except after giving notice in writing of the intended transfer to the Competent Authority and under sub-section (2), the Competent Authority shall have the first option to purchase such land on behalf of the State Government at the price calculated in accordance with the provisions of the Land Acquisition Act, 1894 or on any other

corresponding law for the time being in force and if such option is not exercised within a period of sixty days from the date of receipt of the notice, it shall be presumed that the Competent Authority has no intention to purchase such land on behalf of the State Government, and it shall be lawful for such person to transfer the land to whomsoever he may like.

Having regard to the facts of the case, it appears that the Competent Authority has not exercised its option to purchase the land in question within the prescribed period of sixty days from the date of receipt of the notice, i.e. on 23.9.1996 and on the contrary, kept the proceedings pending by informing the petitioner by communication dated 14.11.1996, that the State Government is considering a proposal for taking the matter in review. In view of the above, I am of the view that the Competent Authority and/or the State Government have acted contrary to the provisions of Section 26 of the Act.

Even if the State Government under Section 34 of the Act is entitled to take the matter in revision by calling for and examining the record of the order passed by the Competent Authority, in that event also, the order is required to be passed after affording an opportunity of being heard to the petitioner. Learned Counsel Mr. Shah appearing for the petitioner has made a statement at the Bar that, till date, the petitioner has not received any notice from the State Government, meaning thereby, the State Government has not taken any decision to take the matter in revision, even after a lapse of 13 months. In view of this, I am of the opinion that, the petition requires to be allowed and the communication dated 14.11.1996 issued by the Competent Authority is illegal and without any authority of law and the same requires to be quashed and set aside.

In the result, the petition is allowed. The communication dated 14.11.1996 passed by the Competent Authority and Additional Collector, at Ahmedabad, is hereby quashed and set aside. Consequently, the petitioner is entitled to registration of the sale deed, at Annexure.C for the sale of Plot No.30 in Satyagrah Chhavani, at Ahmedabad, in favour of the concerned purchasers. Rule is made absolute accordingly, with no order as to costs.

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Sreeram.

